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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,619	02/27/2004	Chang Yi Wang	1151-4165US1	9919

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EXAMINER	
FORD, VANESSA L	

ART UNIT	PAPER NUMBER
1645	

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/789,619	WANG, CHANG YI	
	Examiner	Art Unit	
	Vanessa L. Ford	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2004*.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-51* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-51* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-2 are drawn a FAFSD target peptide, classified in class 530, subclass 326.

II. Claims 3-26 and 30-33 are drawn to a peptide immunogen and composition, classified in class 530, subclass 324.

III. Claims 27-29 are drawn to a synthetic peptide, classified in class 530, subclass 300.

IV. Claims 34-37 are drawn to a method for inducing anti-FAFSD peptide antibody classified in class 424, subclass 184.1.

V. Claims 38-35 are drawn to a method for reducing adherence, classified in class 514, subclass 12.

VI. Claims 46-51 are drawn to a polymer, classified in class 530, subclass 323.

2. Groups I, II, III and VI are related are related as different products. Groups I, II, III and VI are structurally and functionally distant products.

3. Groups (I and II) and (IV and V) are product and process of using. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a material different process (MPEP 806.05(h). In the instant case the inventions of Groups I and II can be used to produce antibodies.

4. Groups (III and VI) and (IV and V) are unrelated as product and method of using. The product of Groups III and VI is not required in the method of Groups IV and Therefore, they are materially distinct and independent from each other as claimed.

5. Groups IV and V are different methods. They differ because they have different goals, require different method steps and parameters.

6. In the event that applicant elects Group I or Group III or Group VI, applicant is required to elect a single SEQ ID NO. The claims in Groups II, III and VI are generic to a plurality of disclosed patentably distinct species (SEQ ID NOs), based on structural and functional differences.

Species a) SEQ ID NO:3

Species b) SEQ ID NO:4

Species c) SEQ ID NO:5

Species d) SEQ ID NO:6

Species e) SEQ ID NO:8

Species f) SEQ ID NO:86

Species g) SEQ ID NO:88

7. In the event that applicant elects Group II or Group IV or Group V, applicant is required to elect a single SEQ ID NO. The claims in Groups II, IV or V are generic to a plurality of disclosed patentably distinct species (SEQ ID NOs), based on structural and functional differences.

Species a) SEQ ID NO:4

Species b) SEQ ID NO: 5

Species c) SEQ ID NO: 9

Species d) SEQ ID NO: 10

Species e) SEQ ID NO:16

Species f) SEQ ID NO: 17

Species g) SEQ ID NO: 20

Species h) SEQ ID NO: 21

Species i) SEQ ID NO: 28

Species j) SEQ ID NO: 29

Species k) SEQ ID NO: 38

Species l) SEQ ID NO: 39

Species m) SEQ ID NO: 49

Species n) SEQ ID NO: 50

Species o) SEQ ID NO: 67

Species p) SEQ ID NO: 74

Species q) SEQ ID NO: 75

Species r) SEQ ID NO: 76

Species s) SEQ ID NO: 77

Species t) SEQ ID NO: 78

Species u) SEQ ID NO: 79

Species v) SEQ ID NO: 80

Species w) SEQ ID NO: 81

Species x) SEQ ID NO: 82

Species y) SEQ ID NO: 83

Species z) SEQ ID NO: 84

Species aa) SEQ ID NO: 85

Species ab) SEQ ID NO: 86

Species ac) SEQ ID NO: 88

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. Because these inventions are distinct for the reasons given and have acquired a separate status in the art because of their recognized divergent subject matter as shown by their different classification, restriction for examination purposes as indicated is proper. Moreover, in the absence of restriction it would place an undue search and examination burden on the examiner.

9. Applicant is advised that the reply to this requirement to be complete must include an election of invention to be examined even though the requirement be traversed (37 CFR 1.143).

10. Applicant is reminded that upon that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. 1.48(b) and by the fee required under 37 C.F.R. 1.17(h).

11. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is

found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Conclusion

12. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308–0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 872-9306.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (571) 272-0857. The examiner can normally be reached on Monday – Friday from 9:00 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (571) 272-0864.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov./>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vanessa L. Ford
Biotechnology Patent Examiner
April 19, 2005

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